

**Notice of Allowability**

Application No.

10/776,316

Examiner

Teresa J. Walberg

Applicant(s)

FAUST ET AL.

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the application filed 11 February 2004.
2. ☒ The allowed claim(s) is/are 1-9.
3. ☒ The drawings filed on 11 February 2004 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 8/13/04, 5/24/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Teresa J. Walberg*  
Teresa J. Walberg  
Primary Examiner  
Art Unit 3742

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Peter Holsen on 28 January 2005.

The application has been amended as follows to correct matters of form:

In claim 1, at line 3, after "(7)," has been inserted the text --and comprises a torch head (2) which has exchangeably mounted thereon at least one cutting or welding tool,--.

In claim 1, at line 10, the text "(3; 4; 5)" has been changed to --(3; 4; 5)--.

In claim 5, at line 13, "of" has been changed to --or--.

Additionally, claim 10 has been deleted as being drawn to a non-elected invention.

The abstract has been amended to read as follows:

#### Abstract of the Disclosure

A thermal working tool (1) is movable along a workpiece surface (7) and includes a torch head (2) which has exchangeably mounted thereon cutting or welding tools (3; 4; 5) extending between the torch head (2) and the workpiece

surface (7). A distance control for setting a predetermined working distance (A) between the working tool (1) and the workpiece surface (7) is carried out by a magnetic system, an alternating magnetic field being produced in a sensor body with ferromagnetic properties above the workpiece surface (7). The torch head (2) and at least one of the cutting or welding tools (3; 4; 5) contain ferromagnetic material and form at least part of the sensor body (2; 3; 4; 5). The magnetic field produced is sensed by two measuring coils, and is used for controlling the working distance (A).

2. The following is an examiner's statement of reasons for allowance: The prior art of record does not disclose or render obvious a method and apparatus of the type claimed in which a torch head and a cutting or welding tool are used as a sensor body to determine the distance between the tool and the workpiece surface by use of a magnetic field.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Election/Restrictions***

3. Restriction to one of the following inventions was required under 35 U.S.C. 121:

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- I. Claims 1-9, drawn to a thermal working machine and method of use, classified in class 219, subclass 121.54.
- II. Claim 10, drawn to a cutting or welding tool, classified in class 219, subclass 121.48.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the independent claims 1 and 5 do not require a tool consisting of ferromagnetic material. The subcombination has separate utility such as use as a tool in a torch that does not include magnetic distance sensing.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with attorney Peter Holsen on 28 January 2005, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Claim 10 was withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

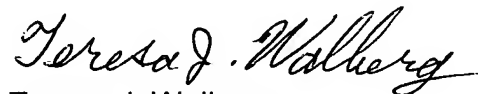
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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to show torch position sensors and controls: Greene, Purkhiser, Wofsey, Mierendorf, Sommeria, Schmall (4,333,052), and Schmall (4,810,966).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa J. Walberg whose telephone number is 571-272-4790. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teresa J. Walberg  
Primary Examiner  
Art Unit 3742